

MONTANA LEGISLATIVE HISTORY

Chapter 356 19 85

Bill H \_\_\_\_\_ S 294

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) Mar 21 ✓ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out Mar 21 ✓ c

S. Committee on Judiciary

Hearing Date(s) Feb 18 ✓ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Feb 18 ✓ c

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Did this bill originate in an interim committee? \_\_\_\_\_ Yes \_\_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

SENATE BILL NO. 294

INTRODUCED BY CRIPPEN, PECK, B. BROWN, PINSONEAULT, MAZUREK,  
ECK, BLAYLOCK, YELLOWTAIL, REGAN, DANIELS, HALLIGAN, MILES, CODY,  
FRITZ, KEENAN, DRISCOLL, JACOBSON, KADAS, BERGENE, D. BROWN,  
REAM, HARPER, ERNST, MILLER, BACHINI, J. BROWN, NATHE,  
ADDY, SHAW, RAPP-SVRCEK, J. HAMMOND, MERCER, O'HARA,  
M. WILLIAMS, HARDING, CONNELLY, BRADLEY, COMPTON, CONOVER

IN THE SENATE

|                   |                                                       |
|-------------------|-------------------------------------------------------|
| February 1, 1985  | Introduced and referred to<br>Committee on Judiciary. |
| February 18, 1985 | Committee recommend bill do<br>pass. Report adopted.  |
| February 19, 1985 | Bill printed and placed on<br>members' desks.         |
| February 20, 1985 | Second reading, do pass as<br>amended.                |
| February 21, 1985 | Correctly engrossed.                                  |
| February 22, 1985 | Third reading, passed.<br>Ayes, 49; Noes, 0.          |
|                   | Transmitted to House.                                 |

IN THE HOUSE

|                   |                                                               |
|-------------------|---------------------------------------------------------------|
| February 27, 1985 | Introduced and referred to<br>Committee on Judiciary.         |
| March 21, 1985    | Committee recommend bill be<br>concurrent in. Report adopted. |
| March 23, 1985    | Second reading, concurrent in.                                |
| March 26, 1985    | Third reading, concurrent in.<br>Returned to Senate.          |

# SENATE FINAL STATUS

3/29 SIGNED BY GOVERNOR  
CHAPTER NUMBER 212 EFFECTIVE DATE: 3/29/85

SB 293 INTRODUCED BY VAN VALKENBURG, MCCALLUM, GAGE  
LOCAL OPTION INCOME TAX

1/31 INTRODUCED  
2/01 REFERRED TO LOCAL GOVERNMENT  
2/19 HEARING  
3/09 TABLED IN COMMITTEE

SB 294 INTRODUCED BY CRIPPEN, PECK, B. BROWN, ET AL.  
INCLUDE SPOUSE IN THE OFFENSE OF SEXUAL INTERCOURSE  
WITHOUT CONSENT

1/31 INTRODUCED  
2/01 REFERRED TO JUDICIARY  
2/18 HEARING  
2/18 COMMITTEE REPORT-BILL DO PASS  
2/20 2ND READING PASS AS AMENDED  
2/22 3RD READING PASS

49  
49

TRANSMITTED TO HOUSE  
2/27 REFERRED TO JUDICIARY  
3/21 HEARING  
3/21 COMMITTEE REPORT-BILL CONCURRED  
3/23 2ND READING CONCURRED  
3/26 3RD READING CONCURRED

93  
98

RETURNED TO SENATE  
3/30 SIGNED BY PRESIDENT  
3/30 SIGNED BY SPEAKER

4/01 TRANSMITTED TO GOVERNOR  
4/04 SIGNED BY GOVERNOR  
CHAPTER NUMBER 356 EFFECTIVE DATE: 10/01/85

SB 295 INTRODUCED BY ECK, HARDING, ET AL.  
NO DEPOSIT OR INVESTMENT OF PUBLIC FUNDS IN BANK  
FIRM IN SOUTH AFRICA

1/31 INTRODUCED  
2/01 REFERRED TO STATE ADMINISTRATION  
2/02 FISCAL NOTE REQUESTED  
2/08 HEARING  
2/08 FISCAL NOTE RECEIVED  
2/11 ADVERSE COMMITTEE REPORT  
2/12 BILL KILLED

36

SB 296 INTRODUCED BY STIMATZ, B. BROWN, ET AL.  
REVISE GRADE AND REEXAMINATION AREAS OF LICENSE  
PRACTICE MEDICINE

1/31 INTRODUCED  
2/01 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY  
2/11 HEARING  
2/14 COMMITTEE REPORT-BILL PASS AS AMENDED  
2/16 2ND READING PASS  
2/19 3RD READING PASS

41  
42

IN THE SENATE

March 26, 1985

Received from House.

March 27, 1985

Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 294  
2 INTRODUCED BY *Capps, Bob Brown, Dick Van Vleet, Thegnich*  
3 *Eck, Lay, Yellowtail, Jones, Hollings*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE *Ernst*  
5 SPOUSAL EXEMPTION IN THE CRIMINAL OFFENSE OF SEXUAL *Borgone, Carlin*  
6 INTERCOURSE WITHOUT CONSENT; AMENDING SECTION 45-5-503, *Walt*  
7 MCA." *Bachinski, J. Brown, HATH, Hally, Kapp-Sink*  
8 *J. Hammond, Merce, O'Hara, M. W. H. 11/1/2001, Harding, Council*  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10 Section 1. Section 45-5-503, MCA, is amended to read:  
11 "45-5-503. Sexual intercourse without consent. (1) A *Grady, Conpton, Conroy*  
12 person who knowingly has sexual intercourse without consent  
13 with a person of the opposite sex not-his-spouse commits the  
14 offense of sexual intercourse without consent.  
15 (2) A person convicted of sexual intercourse without  
16 consent shall be imprisoned in the state prison for a term  
17 of not less than 2 years or more than 20 years and may be  
18 fined not more than \$50,000, except as provided in  
19 46-18-222.  
20 (3) If the victim is less than 16 years old and the  
21 offender is 3 or more years older than the victim or if the  
22 offender inflicts bodily injury upon anyone in the course of  
23 committing sexual intercourse without consent, he shall be  
24 imprisoned in the state prison for any term of not less than  
25 2 years or more than 40 years and may be fined not more than

1 \$50,000, except as provided in 46-18-222.

2 (4) An act "in the course of committing sexual  
3 intercourse without consent" shall include an attempt to  
4 commit the offense or flight after the attempt or  
5 commission.

6 (5) No evidence concerning the sexual conduct of the  
7 victim is admissible in prosecutions under this section,  
8 except:

9 (a) evidence of the victim's past sexual conduct with  
10 the offender;

11 (b) evidence of specific instances of the victim's  
12 sexual activity to show the origin of semen, pregnancy, or  
13 disease which is at issue in the prosecution under this  
14 section.

15 (6) If the defendant proposes for any purpose to offer  
16 evidence described in subsection (5)(a) or (5)(b), the trial  
17 judge shall order a hearing out of the presence of the jury  
18 to determine whether the proposed evidence is admissible  
19 under subsection (5).

20 (7) Evidence of failure to make a timely complaint or  
21 immediate outcry does not raise any presumption as to the  
22 credibility of the victim."

-End-

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on SB 321 was closed.

CONSIDERATION OF SB 294: Senator Bruce Crippen, sponsor of SB 294, testified this bill amends the criminal codes to eliminate the spousal exemption from sexual intercourse without consent. Section 45-5-501, MCA, defines the term "without consent." The marital exception is a violation of the equal protection clauses of the Montana and federal constitutions because it arbitrarily classifies persons on the basis of their marital status. The goal of a rape statute is to prevent violent sexual assaults upon persons. There is no basis for distinguishing between marital and non-marital rape. The background as to why Montana has a spousal rape exemption is not in our statutes. The first and oldest legal theory is a biblical theory--the wife is the property of her husband. In common law, a single woman enjoyed the same legal status as a man--she could own or transfer property. The moment she became married, she relinquished those rights, and under that theory of law, a husband and wife were regarded as one--and that one was the husband. The husband cannot be guilty of rape committed by himself upon his wife. In the seventeenth century, marriage became a contractual relationship. However, the woman did not say "I do, and I agree to be brutally raped." Under contract law, the remedy for breach of contract is generally damages and not forced performance. Some believe these statutes should be in existence for marital reconciliation. One of the more telling arguments against elimination of this is the vindictive wife. There is really no statistical data to support the fear that a vindictive wife is going to use rape to get back at her husband. There are much easier crimes to prove than rape because rape is very hard to prove, and it becomes more so when it is between spouses. Just the idea that the rape is between spouses raises the standard of proof one notch before a jury. The jury will want proof beyond a reasonable doubt. There have been comments made that if you have been raped, why not get divorced. That is probably what will happen. This statute still applies even when the couple will separate and are in the process of getting a divorce. Comments have been made about protecting marital privacy. It protects against consensual acts, but most certainly not against violent acts. There is really no rational basis for the spousal rape exemption, and twenty states have eliminated it.

PROPOSERS: Tammy Plubell, representing the Women's Law Caucus, stated they feel marital rape is a violation of the equal protection clauses of both the Montana and federal constitutions. (See witness sheet attached

as Exhibit 1.) Ms. Plubell addressed some of the issues raised by Senator Crippen. She stated forced intercourse does not speed up reconciliation. Less than one-half of any rapes are reported, and, therefore, she does not believe there will be malicious prosecution, because victims are humiliated. There are better ways of using the courts if you have a vindictive wife on your hands. The problem of proof is true of all rapes. Marital rape is not a less violent crime than non-marital rape. Marital privacy should not extend to a husband's forcibly raping his wife. This state has a duty to intervene and protect all persons, whether married or not. It perpetuates sexual violence as a learned trait. Marital privacy does not shield a husband who assaults his wife, and it should not when a husband rapes his wife. Maylinn Smith, Member, Women's Law Cause, testified there are 20 states that have changed their existing statutes. Two have enacted specific statutes that deal with marital rape. Four states have judicially changed their laws (Florida, New Jersey, New York, and Massachusetts). Mike McGrath, Lewis and Clark County Attorney, testified that from a prosecutor's standpoint, these cases would be more difficult to prove, and he personally does not believe the state should have a policy where they sanction rapes against wives. Sue MacLane, Women's Place, Missoula, presented written testimony in support of the bill (Exhibit 2). Caryl Wickes Borchers, Executive Director, Mercy Home, Great Falls, presented written testimony in support of the bill (Exhibit 3). Noreen Dever staff member, Mercy Home, Great Falls, presented written testimony in support of SB 294 (Exhibit 4). Melinda, victim, Great Falls Mercy Home, presented written testimony in support of the bill (Exhibit 5). Lenore Talioferro, staff, Friendship Center in Helena, states she works with women who have escaped from rape and abuse situations. She is concerned about the children who need to learn to grow up and learn to be loving parents and not feel this behavior is okay. Marti Adrian, former counselor in Montana, urged the committee to pass SB 294. Dr. Bailey Molineux testified rape is a violent act, not a sexual act, and stated he believes violence has no place in a marriage. (See witness sheet attached as Exhibit 6.) Gail Kline, representing the Women's Lobbyist Fund, presented written testimony in support of the bill (Exhibit 7).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mr. McGrath if he thought that he, as a prosecutor, would have difficulty distinguishing between the rape of a spouse and someone who would utilize this bill to retaliate against a spouse. Mr. McGrath stated no more so than with any rape case. He doesn't see why an individual's being married will make any difference. Senator Mazurek asked Mr. McGrath if he stated he thought it would be more difficult to get a conviction in a spousal rape case. Mr. McGrath responded yes.

CLOSING STATEMENT: Senator Crippen stated rape is rape. It's a violent, heinous act made no less violent or heinous by the fact the partners are married.

Hearing on SB 294 was closed.

ACTION ON SB 294: Senator Blaylock moved SB 294 be recommended DO PASS. The motion carried unanimously.

ACTION ON SB 321: Senator Shaw moved SB 321 be recommended DO PASS. The motion carried unanimously.

ACTION ON SB 28 AND TABLING OF SB 69: Senator Mazurek stated we have agreed on everything except the due process provision as to whether a compact should be included in a preliminary decree for informational purposes or in a final decree. It is agreed we should require reports to go to the water judge; we should allow a means to file reserved water rights under the existing law; the commission should be extended; and the deadline should be taken out. Senator Mazurek asked Senator Galt if he concurred. Senator Galt responded no, but he could see the rationale for doing so. He believed the commission could still say it is too late to negotiate. Senator Crippen stated we are trying to get something done to avoid litigation. Since everyone objects to the time limitation and it seems to be a thorn under their saddle, so it should be eliminated. He believes we would be better off doing anything we can to get them to the bargaining table. Senator Mazurek stated the deadline would only apply to the Blackfoot Tribe. Senator Mazurek stated it is his recommendation that we adopt all of the amendments we talked about with the exception of the one relating to due process. Senator Galt stated they missed one--the need to extend the time to six months to get back in and file. Senator Mazurek stated the issues that remain unresolved are the Reid Chambers' amendments and the Attorney General's amendments. He felt maybe the thing to do rather than favor one side or the other is to leave the law as it is, although he thinks that is almost worse than adopting the Attorney General's amendment. Senator Yellowtail commended the chairman for allowing a second hearing on these bills. However, he stated he could not help but notice that the Attorney General's office came in after the first hearing with significant amendments which the tribes had no opportunity to see. The same thing happened with respect to the Attorney General's proposed amendments to the Chambers' amendment. The tribes were caught flat-footed again at this hearing and had not had an opportunity to see those suggestions. Senator Yellowtail stated he is concerned with the process. Senator Mazurek stated the committee could adopt the Chambers' amendment and let the House deal with any technical changes that are required. He stated we should consider extending the commission; require reports to the water judge; provide a means for reserved water right holders to file under the





(February 18, 1985

Judiciary

503 2944 321

## VISITORS' REGISTER

| NAME                 | REPRESENTING                   | BILL #  | Check One |        |
|----------------------|--------------------------------|---------|-----------|--------|
|                      |                                |         | Support   | Oppose |
| Barry Robinson       | MT Psychological Assoc         | 294     | ✓         |        |
| Ken Lobb             | District Judge                 | 321     | ✓         |        |
| Susan MacDonald      | Women's Place, Missoula        | 294     | ✓         |        |
| Mark Adrian          | Self, former counselor         |         | ✓         |        |
| Mike McGrath         | LEWIS & CLARK COUNTY ATT       | 321/294 | ✓         |        |
| Gail Kline           | Women's Lobbyist Fund          | 321/294 | ✓         |        |
| Billy Franz          | Women's Law Caucus             | 294     | ✓         |        |
| Phyllis Smith        | Women's Law Caucus             | 294     | ✓         |        |
| Ann Schneider        | Women's Law Caucus             | 294     | ✓         |        |
| Amy Pfeiffer         | Women's Law Caucus/UMLS        | 294     | ✓         |        |
| Mary O'Hallahan      | Women's Law Caucus             | 294     | X         |        |
| Tommy Whitell        | Women's Law Caucus             | 294     | ✓         |        |
| Joan Seuer           | BF Mercy Home                  | 294     | ✓         |        |
| Kelly Chandler       | Women's Lobbyist Fund          | 321/294 | ✓         |        |
| Wendy Blinder        | BF Mercy Home/Victim           | 294     | ✓         |        |
| Jessie Caldwell      | BF Mercy Home                  | 294     | ✓         |        |
| Joan Throckmorton    | Self                           | 294     | ✓         |        |
| Debra F. Robinson    | Friendship Cent                | 294     | ✓         |        |
| Carol Wickham Archer | Montana Coalition Against D.V. | 294     | ✓         |        |

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: Mary Gallagher - Tammy Pluhell DATE: 2/18/85

ADDRESS: C/o Women's Law Caucus UofM Law School Missoula

PHONE: 721-6578

REPRESENTING WHOM? Women's Law Caucus

APPEARING ON WHICH PROPOSAL: Senate Bill 294

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 02/18/85

BILL NO. SB 294



## WOMEN'S PLACE

*Women working together to end domestic and sexual violence*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 02/885

BILL NO. SB 294

Testimony for SB 294  
Senate Judiciary Committee

I am here as a representative of many women, both victims of sexual assault and crisis counselors, who believe marital rape is a dehumanizing and aggressive act of violence against women. The law which currently acknowledges sexual assault as a violation of women fails to recognize that rape by a spouse is equally violating. A survivor of marital rape experiences the same post-rape syndrome as a survivor of stranger or acquaintance rape; fear, humiliation, guilt and physical symptoms of stress. We believe that no one has the right, ethically or legally, to overpower a woman's rights to her body and her emotions, Senate bill 294 would sanction this belief by extending and acknowledging the legal rights of married women.

Rape does occur in marriages and is often accompanied by other acts of violence used to control and humiliate women. One woman, who was raped by her husband, sought help through the Battered women's Shelter and Women's Place in Missoula. This client was married for ten years, has two children and was

127 East Main Room 218 Missoula, Montana 59802 543-7606

recently divorced. She was willing to be quoted for use in this testimony to support the fact that rape in marriage is very real and is a violation of human rights.

(quote)"To talk about the actual rape, it was really terrifying. I don't think it would have been more terrifying if a stranger had done it. Because it was so violent, and he was smothering me.....I couldn't breathe. He was talking about killing himself and I didn't know if I would make it through the night. He said it wasn't that bad because we were married. That it wasn't that big of a deal. His family, his brothers all said it was fine.....it's understandable because they would do the same thing."(unquote)

When a man rapes his wife, he is no longer in the role of a trusted companion; the man becomes a stranger, untrustworthy, physically aggressive and often violent. Yet the law, as it currently reads, does not view this as a crime of violence. Technically, it was this man's right, and any man's right because there is no no law against it. The state of Montana is legally sanctioning this violence. The social values supported by the law, state that it is morally ok to victimize one's wife.

(quote)"He couldn't understand why it bothered me, he still doesn't understand..... he thinks he had a right to do it. He couldn't understand why I wanted a divorce"

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 02/8/85  
BILL NO. SB 294

The responsibility of the Legislative body is to establish laws. Through these laws, social standards and values are instilled in the minds of individuals. So as legislators, you are guiding and determining these social values. With a law against marital rape, men will begin to question their rights to violate their wives, and view this act as morally wrong. This is the first step towards ending sexual assault within marriages.

Marital rape is prevalent in Montana, yet no statistics are kept by law enforcement officials because it is not prosecutable. Since October of 1984, there were 578 domestic violence cases reported in Montana. It is estimated by women who worked with these cases that 50% involved marital rape. It is frustrating and discouraging for women when they do not have the legal system as an option for regaining control in their lives.

Members of the opposition to marital rape legislation have used the argument that women would use this as a vindictive weapon against their husbands; a cry wolf strategy for getting even. This is an unjustified argument when one considers the personal nature of reporting a rape. Rape victims face a great deal of personal vulnerability and exposure through the process of reporting, and the decision to report is not an easy one to reach. Rape exams, which are

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 02/88

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important for gathering evidence for prosecuting, are often painful, expensive, and frightening. It is hard to imagine a woman putting herself through this experience just to get even. This trivial concern negates the seriousness of this issue.

From a professional perspective, it is necessary for agencies to work together to stop domestic violence in the family, including sexual assault. These agencies include support services, shelters, and law enforcement agencies. Agencies cannot give adequate services without also providing legal referrals and options for women. Senate bill 294 would aid in achieving more tangible options for support by granting married women legal rights for protecting themselves against spousal rape. We strongly urge you to legislate and ensure enforcement of laws against marital rape, in hopes of providing love without fear.

Susan Wall-MacLare 2/14/85

Bill Tulp 2/14/85

Kerry Wall-McLame 2/14/85

Sue Silverberg 2/14/85

Mark Anderson 2/14/85

Deanna Moffatt 2/14/85

Cynthia K. Cook 2/15/85

Pat Edwards 15 Feb 85

Amy Hansen Domestic Violence Program Co-ordinator - Women's Place

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 02/885

BILL NO. SB 294

**SBA** MONTANA STUDENT BAR ASSOCIATION  
UNIVERSITY OF MONTANA LAW SCHOOL  
MISSOULA, MONTANA 59801  
**WOMEN'S LAW CAUCUS**

TEMPORARY RESTRAINING ORDERS AND JUSTICES' OF THE PEACE

House Bill 310 provides protection for domestic violence victims by increasing availability and enforcement of temporary restraining orders. As originally introduced, HB 310 allowed justice of the peace courts to issue temporary restraining orders. The House of Representatives amended this section out of the bill. This amendment severely limits access to temporary restraining orders. The provision allowing justice of the peace courts to issue temporary restraining orders should be restored to HB 310.

The Amendment Limits Access to T.R.O.s

Currently only district court judges may issue restraining orders. Restraining orders provide emergency relief from imminent harm. To be effective, they must be available immediately. Many women are now denied this immediate relief. Rural women are at a special disadvantage. A single judicial district may cover hundreds of miles. For example, one district judge covers the counties of Meagher, Wheatland, Golden Valley and Mussellshell. Domestic violence victims in these counties are effectively denied emergency relief due to the lack of access to district judges. Urban women suffer also. Domestic violence victims in Butte went an entire month this summer without access to a district judge. One district judge was on vacation, and the other was ill. Butte victims had nowhere to turn. Since every county has at least one justice of the peace, allowing justices to issue restraining orders would protect victims by greatly increasing access to emergency relief.

Justices of the Peace Have the Necessary Expertise

A temporary restraining order may be issued when a delay would cause immediate and irreparable injury to the victim. MCA 27-19-315. Justices of the peace have the expertise to make this determination. Their current jurisdiction requires them to make many similar determinations. For example, justice of the peace courts have the power to issue arrest warrants. MCA 46-1-201(6). Before issuing an arrest warrant, the justice of peace must determine whether there is sufficient evidence to believe that the person committed a crime. MCA 46-6-201. This determination is very similar to that involved in issuing a temporary restraining order. Justice of the peace courts also determine whether an arrested person has committed a felony, and if not, the justice has the power to discharge the accused person. MCA 46-10-203. In addition, justices of the peace have jurisdiction over all misdemeanor domestic assault cases. MCA 3-10-303. It is sadly ironic that a justice of the peace can punish an offender after a violent act but cannot prevent violence.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 021885



## Justices of the Peace Have the Necessary Training

To be a justice of the peace, a person must be an attorney; must have been a justice withing the preceeding five years; or must complete an orientation course under the direction of the University of Montana law school. MCA 3-10-202. In addition, justices of the peace must attend two annual training sessions supervised by the supreme court. MCA 3-10-203. In contrast, a district court judge must practice law in Montana for five years prior to becoming a judge. MCA 3-5-202. To suggest that an attorney, through his or her technical knowledge of the law, is better suited to issue temporary restraining orders is ludicrous. Common sense and experience, not legal training, is necessary to determine whether a temporary restraining order is needed to prevent immediate and irreparable harm to a domestic violence victim.

JUDICIARY COMMITTEE

2

221885

February 2, 1985

Capitol Station  
Helena, Montana 59601

Dear Legislators,

I am writing to ask you to support the continuation of additional funding of the Domestic Violence Grant Program with the 4% General Fund Monies in the Executive Budget over and above the Marriage License Fee monies that we have totally funded the Domestic Violence Grant Program with since July of 1979.

In February of 1977 the Montana Legislature started working with us to start solving the problem of Domestic Violence by a Senate-House Joint Resolution which mandated Crime Control to study Spouse Abuse in Montana. That Study was made and called 'SPOUSE BATTERING IN MONTANA'. In April 1978, A STATE TASK FORCE ON SPOUSE ABUSE was established to read and study 'THE STUDY' and make recommendations to the 1979 Legislature. In addition to the Legislation that has been passed by you in the last 4 Legislatures, the Montana Task Force on Spouse Abuse has been able to have written a STATE TRAINING PACKET ON SPOUSE ABUSE developed for Mental Health Professionals and Clergy; a SPOUSE ABUSE PROTOCOL in the 61 State Hospitals; and a RAPE PROTOCOL in the 61 State Hospitals; a booklet with the STATEWIDE SERVICES entitled 'BATTERED WOMEN RIGHTS AND OPTIONS IN MONTANA'; do COMMUNITY INTERVENTION WORKSHOPS sponsored by the LAW ENFORCEMENT ACADEMY; plus spearhead GRASS ROOTS EDUCATION on the problem in Communities; do State Workshops in TRAINING ADVOCATES; training in the use of the STATE TRAINING PACKET; and a workshop in the latest research on the BATTERER and the CONTINUING CYCLE of DOMESTIC VIOLENCE. In October 1982, the MONTANA COALITION AGAINST DOMESTIC VIOLENCE was formed and incorporated. We are continuing the GRASS ROOTS EDUCATION statewide(I do 60 Educational workshops and talks each year)plus have continued our State Workshops such as: Dr. Lenore Walker's latest RESEARCH on the BATTERED WOMEN and BATTERER; the "RELIGIOUS RESPONSE TO DOMESTIC VIOLENCE;" and THE BATTERERS PERSPECTIVE" at our Montana Coalition Against Domestic Violence State meetings.

The Great Falls Mercy Home, Inc. opened in May 1977, our first Shelter in Montana and one of 30 in the United States addressing the problem of Spouse Abuse. We have been able to give technical assistance and spearhead 6 other Shelters in the State and 12 Spouse Abuse Task Forces; have Safe Homes (private homes for 3 day intervention) and network with the Shelters if needed, in addition to having grass roots education and outreach to all parts of the State. Listed below are recent updated services and educational outreach.\*asterisk denotes Shelters.

Hi-Line Help for Abused Spouses has done education and outreach to: Joplin, Box Elder, Ft. Belnap Reservation, Rocky Boy Reservation, Chinook, Hingham, Kremlin, Rudyard, State Workshop  
Great Falls Mercy Home has done education and outreach to: Belt (trained an outreach Group Facilitator), Cascade, Stockett, Ulm, Vaughn, Sand Coulee, Choteau, Fort Benton, University of Montana (2 classes), Browning, Shelby, Cut Bank, Conrad, Lewistown, State Workshop.  
Missoula BWS Shelter has done outreach and education to: Stevensville, Hot Springs, Hamilton, Darby, Seeley Lake, Ronan, Frenchtown, Milltown, Potomac.  
Kalispell Rape Action Line has done education and outreach to: Bigfork, Whitefish, Columbia Falls, Olney, Pablo-Ronan, Dayton, Libby.  
Glasgow, Glendive and Miles City have had a 17 County State Grant until this past year when they did individual Grants but they have done outreach to: Sidney and Glasgow did outreach to Richland, Nashua, Malta  
Glendive did outreach and education to Wibaux, Terry, and Circle Whitehall  
Helena Friendship Center has done education and outreach to Boulder, Townsend, Augusta and A  
Ozeman has done education and outreach to: Belgrade, Ennis, Livingston, West Yellowstone, Big Sky, White Sulphur Springs, State Workshop.  
Illon has done education and outreach to: Melrose, Sheridan, and Lima  
Attle Safe Space has done education and outreach to: Whitehall, Twin Bridges, Sheridan, Anaconda, Deer Lodge.  
Pablo-Ronan Shelter supported by some Salish-Kootenai Monies opened in 1982 in Pablo-Polson, Ronan Area.  
Lings Shelter did outreach and education to: Ft. Belnap Reservation, Cheyenne Reservation  
Strip-Victims of Violence Task Force Crow Reservation and Colstrip.  
Lewistown- Spouse Abuse Emergency Services (SAVES)  
LY - Lincoln Ct. Womens Help Line for Eureka and Troy  
White Bridges - has a 24 hr. Crisis Line/Information  
Whitehall - Jefferson Ct. Spouse Abuse Program

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

February 18, 1985

Capitol Station  
Helena, Montana 59801

Dear Legislators,

I am the Legislative Representative from the Montana Coalition Against Domestic Violence and I am urging you to pass Senate Bill 294 (Redefining our Marital Rape Law.)

The Montana Coalition Against Domestic Violence is a network of Individuals and Organizations concerned about aggressive behaviour in our society, and interested in promoting a non-violent environment. Through technical and emotional support we will work to improve our response to DOMESTIC VIOLENCE (SPOUSE ABUSE AND CHILD ABUSE) in our Communities. Our Primary Purpose is to provide and maintain a standard for non-violence in human relationships.

The M.C.A.D.V. sponsored a 'LOVE WITHOUT FEAR' WEEK this past week around the State including Valentine's Day, so I think it is appropriate that we are addressing protective legislation dealing with a violent crime such as Marital RAPE.

In 1979, The State Task Force on Spouse Abuse (which I chaired for 4½ years) introduced SB 409 which eliminated the exclusion regarding rape between spouses if they are living apart "whether under a decree of judicial separation or otherwise." The Victim who testified on this Bill grew up in Missoula. She married and moved out of State, but found herself in a very violent relationship. She changed her name and moved into a different town in Montana and thought he would never find her. One night she came home and he had broken into her apartment, slashed all of her furniture with a knife, and slashed her 17 times and raped her. The 1979 Legislature passed this first protective legislation dealing with this problem.

As you are already aware, we are not talking about 'NORMAL FAMILY RELATIONSHIPS.' In 1984, my staff and I worked with 570 Women and Children in our Mercy Home Shelter, and 789 ADDITIONAL FAMILIES in outreach and aftercare. Because of our Educational efforts we are doing much more prevention work.. We use an in-depth 3 page 'Confidential Intake Form' to get the case histories of the different types of abuse and we find RAPE is part of the Physical Violence in 70% of our cases.

I advocated and testified in Court this past year with a client who:

- had a .357 Magnum Pistol held to her head while he raped her.
- whose husband broke into her apartment (breaking a restraining order) with a shotgun and raped her.
- whose husband drank all day, was on amphetamines all evening, and raped her repeatedly all night.
- whose husband raped her after she was in labor and had asked him to take her to the hospital to deliver their child.
- whose husband raped her in front of their son, after a physical beating. (These are just a few of the cases we've worked with.)

Researchers and service providers have found that Children raised in a family where there is 'Spouse Abuse' learn 'violence is acceptable or normal behavior' and become abusers themselves even if they themselves are not abused.

Service providers in Montana are trying to offer options and education throughout the State against this 'learned behaviour'. We ask for your continued support in this 'PROTECTIVE LEGISLATION' of SB 294.

Sincerely yours,

*Carol Wickes Borchers*

Carol Wickes Borchers, Exec. Director Mercy Home

Chair, State Task Force on  
Abuse 1978-1982

Leg. Rep. MONTANA COALITION  
DOMESTIC VIOLENCE

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 02/18/85

BILL NO. SB 294

February 18, 1985

Dear Legislators,

The act of rape is purely a crime of violence. It is not a sexual act or a crime of passion. It is brutal violence. The idea persists that women are victimized by strangers. In reality, statistics show 75% of all rapes to be acquaintance rapes. Add to this total the number of marital rapes and the number would be overwhelming.

As a volunteer working with battered women, I see a strong need for a law protecting married women from this violent crime. Women who have been physically assaulted by their husbands run a greater risk of becoming victims of rape than the average individual. These spouses need not be living apart for the criminal act of rape to occur.

The accounts, by battered women, of sexual assaults and marital rape are numerous. This story of one victim illustrates the need for legal action to be taken against the perpetrators of this violent crime.

Helen first came to us after she had been divorced from her husband, John, for two years. At this time John was fighting her for the custody of their two youngest children. It was only after working with us for a period of three years that Helen was able to recount the atrocities she was subject to in the course of their 11 year marriage.

The sexual assault John committed against Helen took numerous forms. While some were more physically and emotionally damaging, all the sexual abuse resulted in sexual degradation. Helen is quoted as saying, "Not only did I not feel like a woman, I no longer felt like a human being."

John's favorite fantasy, and one frequently lived out was to rape Helen. She was supposed to resist. Many times John committed this crime, seriously endangering Helen's health. The delivery of Helen's first child was a painful and difficult one. On the very day that she returned home from the hospital John raped her, tearing through still - tender stitches. On the day she returned home from the hospital after gall bladder surgery, John raped her again. The more she cried and tried to resist, the more pleasure he seemed to derive. It seemed to Helen that John could only enjoy sex if he made her cry by hurting her first.

Helen was not the only victim of John's violent nature. He tried on a number of occasions to rape his brother's wife as well as other married women in their neighborhood. Helen was the only victim, however, not protected by law.

The brutal assaults on Helen are not uncommon today. While marital rape does not happen in typical loving homes; it does, in fact, happen. Married women are entitled to protection from the crime of rape, regardless of the marital status of the criminal. Please provide women with this protection by supporting Senate Bill 294 - redefining the marital rape law.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

Sincerely,

RE: MARITAL RAPE - Senate Bill No. 294

Dear Legislators:

I have been asked to speak on behalf of many women in Montana who have been, are, or will be victims in a battering relationship. Women are victims in three types of situations: dating, marriage, and even after divorce. However, I would like to speak in reference to the issue of the married woman who has been raped by her husband.

I grew up in a religious family as my father is a minister. I have loving parents and while growing up, violence was in no way allowed in the home (aside of typical childhood spankings), and my parents, sisters and I shared mutual respect for one another. Also, having gone to private Christian schools all my life which provided a sheltered environment, I was quite naive to domestic violence.

After graduating from college, I became the victim of a battering relationship. I met a kind, loving, compassionate man who, after a time was no longer able to camouflage his flip side which consisted of insane jealousy, outbursts of violence that involved filthy language, knives, a gun, a pipewrench, throwing at me whatever knickknacks or other things he could get his hands on, manipulation, a drinking problem, severe beatings, and the list goes on. In addition to these things, I found out after I divorced him, that he had been in prison for almost killing his first wife (something he also nearly succeeded in doing to me on several occasions). After I left him, he served time again in prison in another state for almost killing a young man with a hammer. And the last thing I add to this list is marital rape.

Marital rape is something that most often occurred after a violent outburst during phase three of the battering cycle. This phase is made up of kind and contrite loving behavior by the batterer. In my own experience this happened many, many times. There were also occasions when my husband wanted me to take part in unnatural sexual relations. I always refused, and he always forced it on me regardless of how I felt about this degrading, immoral behavior. I can remember in particular one of these times when he badly beat me on the back with his heavy-heeled shoes that he wore to church.

Dr. Lenore Walker, one who has done an extensive study on the battering relationship, states in her research book, The Battered Woman, the following:

Most men feel that their wives' sexual availability is guaranteed by the marriage license. p. 126.

Marjory Fields, the New York City attorney specializing in domestic violence, states that if all the marital rapes were added to the official rape rate, the resulting figures would be overwhelming. Most of the women interviewed in this study felt they had been raped by their batterers. p. 108.

These women are trapped in this type of relationship for many reasons that time will not allow me to go into, and in many cases, they cannot speak for themselves. It takes a tremendous amount of courage and fortitude to make "the break" go get help. Marital rape, up until the past few years, has been a gray area that has now turned black. It is a very large part of the fears of its victims as it can be unpredictable.

Further marital rapes need to be prevented by putting these actions on the criminal's side. Let him take responsibility for his criminal behavior.

Thank you for your consideration and support.



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 02/885

BILL NO. SB 294

NAME: Bailey Motlone DATE: 2/18/85

PHONE: 443-4530

APPEARING ON WHICH PROPOSAL: SB294

COMMENT: \_\_\_\_\_

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 021885  
BILL NO. SB 294

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



February 18, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before the Senate Judiciary Committee on SB 294

Mr. Chair and other members of the Judiciary Committee

For the record my name is Gail Kline, representing the Women's Lobbyist Fund (WLF), speaking in favor of HB 547.

HB 547 only removes the words "not his spouse" from Section 45-5-503, Sexual intercourse without consent. Yet, by removing these three words you as legislators will make a positive impact on family life.

In Montana, marital rape is not a crime and can't be prosecuted. So the seeds of family violence are sown and the cycle of violence grows.

Friday, the Senate recognized rape as a violent act and included sexual intercourse without consent, in HB 103 for delinquent youth.

Now, we are asking you to recognize that rape in marriage is a crime being committed in Montana homes and that it will not be tolerated.

In the U. S. Department of Justice, Attorney General's Task Force on Family Violence, September 1984, page 4 said, "The legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser."

As of last week this violent act, rape in marriage, is illegal in 24 states plus Washington D.C. according to the Women's History Research Center, Inc. West Virginians just changed their law.

By passing SB 294, we make a positive impact on family life and add individual dignity for the victim of rape. We comply with our state constitution in that "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

The WLF urges you to pass SB 294.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 02/18/85

BILL NO. SB 294

# STANDING COMMITTEE REPORT

February 18 1965

MR. PRESIDENT

## JUDICIARY

We, your committee on.....

having had under consideration..... SENATE BILL No. 294

first reading copy ( white )  
color

INCLUDE SPOUSE IN THE OFFENSE OF SEXUAL INTERCOURSE WITHOUT CONSENT

Respectfully report as follows: That..... SENATE BILL No. 294

DO PASS

XXXXXXXXXX

Senator Joe Mazurek

Chairman.



Rep. Montayne wished to go on record as supporting this bill.

Karen Abbott, an abused wife, submitted written testimony which was marked Exhibit K and attached.

Gail Kline, representing the Women's Lobbyist Fund, testified as a proponent to SB 449 with the mandatory arrest provision. A copy of her written testimony was submitted and marked Exhibit L. She also submitted a letter from the Montana Catholic Conference urging the support of this bill which was marked Exhibit M and attached.

There being no further proponents or opponents, Senator Regan closed. She pointed out that this bill refers to all kinds of spousal abuse. She said this would cover 5% of husbands who are also abused by their spouse.

The floor was opened to questions from the committee.

Rep. Keyser pointed out to Senator Regan that the bill makes only reference to "he". Senator Regan said the gender was meant to be neutral.

There being no additional questions, hearing closed on SB 449.

CONSIDERATION OF SENATE BILL NO. 294: Senator Bruce Crippen, District #45, chief sponsor of SB 294, testified on its behalf. The bill deals with the issue of eliminating the spousal exemption in the criminal offense of sexual intercourse without consent. He pointed out that the Senate added an amendment on page 1, lines 21 through 23 which says "a person may not be convicted under this section based on the age of his spouse as provided in 45-5-501 (2) (C)". Senator Crippen said that the marital rape exclusion as it now stands in Montana law is unconstitutional. It is a violation of not only the equal protection clause of the Montana Constitution but also the federal constitution. He said there is no rational basis for distinguishing between marital rape and non-marital rape. The classification of the statute simply does not support the legislative purpose of protecting all persons from this violent act. He went over some of the background of the theories that led to the establishment of the spousal exclusion. He said that 20 other states have adopted this type of legislation, and research shows that very rarely do women try to take the vindictive approach.

PROPOSERS:

Karen McRae, representing the Women's Place, testified as a proponent to the bill. A copy of her written testimony was marked Exhibit N and attached hereto.

Robert Holmes, pastor of the St. Paul's United Methodist Church in Helena, spoke in favor of the bill. A copy of his testimony was submitted and marked Exhibit O.

Bailey Molineux, representing the Montana Psychological Association, urged the committee to support this bill. He pointed out that rape is a violent act and not a sexual act.

Caryl Wickes Borchers, executive director for the Mercy Home, testified in support of this bill and left a copy of her written testimony which was marked Exhibit P.

Connie Rockman from the Great Falls Mercy Home read to the committee a letter written by Melinda who was a victim of a battering relationship. A copy of that letter was marked Exhibit Q and attached.

Cathy St. John, representing the Great Falls Mercy Home, read a letter written by Noreen Seuer, a counselor working with battered women. That letter was marked as Exhibit R and attached.

Gail Kline, representing the Women's Lobbyist Fund, submitted a copy of her written testimony which was marked Exhibit S and attached. She further submitted a written statement dealing with the subject by the Montana Catholic Conference which was marked Exhibit T and attached hereto.

Also going on record as supporting this bill were Marti Adrian, Kelly Rosenleaf and Tammy Plubell.

There being no further proponents or opponents, Senator Crippen closed. He handed out an article dealing with the marital rape issue and quoted some portions from it.  
(See Exhibit U.)

There being no questions from the committee, hearing closed on SB 294.

#### EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 352: Rep. Keyser moved that SB 352 BE CONCURRED IN. The motion was seconded by Rep. Brown and carried with Rep. Cobb dissenting.

ACTION ON SJR 19: Rep. Rapp-Svrcek moved that SJR 19 BE CONCURRED IN. The motion was seconded by Rep. Darko and discussion followed.

Rep. Addy wondered whether title 7 of the federal law discriminates on the basis of political belief. Brenda Desmond said she didn't know.

Rep. Mercer feels that state employees shouldn't be any different than federal employees. He supports this bill. The questions was called, and the motion carried on a voice vote.

ACTION ON SENATE BILL NO. 332: Rep. Hammond moved that SB 332 BE CONCURRED IN. The motion was seconded by Rep. Keyser.

Rep. Addy moved to amend on page 1, line 23, following "names" by inserting "or other personal identifiers". The motion was seconded by Rep. Hammond and carried unanimously.

Rep. Addy further moved to amend on page 2, line 1 following "general" inserting "or records that are not retained or retrieved by personal identifier". The motion was seconded by Rep. Rapp-Svrcek and carried unanimously. Furthermore, Rep. Addy moved to amend on page 4, line 7 following "greater" strike ", reasonable" and insert ". Reasonable". On page 4, line 8 following "action" insert "must be awarded to the prevailing party". The motion was seconded by Rep. Brown. Rep. Krueger made a substitute motion to Rep. Addy's motion to change the word "must" to "may" because it will give the Court more discretion. Without objection, the committee adopted Rep. Krueger's motion, and the question was called on Rep. Addy's motion. It carried on a voice vote. Rep. Keyser further moved that SB 332 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. There being no further discussion, the question was called, and the motion carried with Rep. Cobb dissenting.

ACTION ON SENATE BILL NO. 294: Rep. Brown moved that SB 294 BE CONCURRED IN. The motion was seconded by Rep. Bergene. There being no discussion, the question was called, and the motion carried unanimously.

ACTION ON SENATE BILL NO. 119: Rep. Brown moved that SB 119 BE CONCURRED IN. The motion was seconded by Rep. Hammond. Rep. Brown submitted a copy of his proposed amendment and moved that it be adopted. The motion was seconded by Rep. Miles. The amendment is as follows:

1. Page 2, line 8.  
Following: "to"  
Strike: "and" through "from" on line 9.
2. Page 2, line 15.  
Following: "PAYMENT."  
Insert: "If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct the collection fee from the payment made."

Rep. Brown said that Brenda worked this language out with the department. Rep. Mercer asked Brenda if this amendment was acceptable with the department. Brenda felt that the department should address that particular question. Rep. Brown

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/21/85

| NAME                       | PRESENT | ABSENT | EXCUSED |
|----------------------------|---------|--------|---------|
| Tom Hannah (Chairman)      | ✓       |        |         |
| Dave Brown (Vice Chairman) |         | ✓      |         |
| Kelly Addy                 | ✓       |        |         |
| Toni Bergene               | ✓       |        |         |
| John Cobb                  | ✓       |        |         |
| Paula Darko                | ✓       |        |         |
| Ralph Eudaily              | ✓       |        |         |
| Budd Gould                 | ✓       |        |         |
| Edward Grady               | ✓       |        |         |
| Joe Hammond                | ✓       |        |         |
| Kerry Keyser               | ✓       |        |         |
| Kurt Krueger               | ✓       |        |         |
| John Mercer                | ✓       |        |         |
| Joan Miles                 | ✓       |        |         |
| John Montayne              | ✓       |        |         |
| Jesse O'Hara               | ✓       |        |         |
| Bing Poff                  | ✓       |        |         |
| Paul Rapp-Svrcek           | ✓       |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |

# STANDING COMMITTEE REPORT

March 21 19 85

Speaker

MR. ....

Judiciary

We, your committee on .....

Senate

294

having had under consideration ..... Bill No. ....

Third reading copy ( Blue )  
color

INCLUDE SPOUSE IN THE OFFENSE OF SEXUAL INTERCOURSE WITHOUT  
CONSENT

Senate

294

Respectfully report as follows: That ..... Bill No. ....

BE CONCURRED IN  
DO PASS

241

STATE PUB. CO.  
Helena, Mont.

REP. TOM BARNES,

Chairman.

COMMITTEE SECRETARY



## WOMEN'S PLACE

*Women working together to end domestic and sexual violence*

Testimony for SB 294  
Senate Judiciary Committee

I am here as a representative of many women, both victims of sexual assault and crisis counselors, who believe marital rape is a dehumanizing and aggressive act of violence against women. The law which currently acknowledges sexual assault as a violation of women fails to recognize that rape by a spouse is equally violating. A survivor of marital rape experiences the same post-rape syndrome as a survivor of stranger or acquaintance rape; fear, humiliation, guilt and physical symptoms of stress. We believe that no one has the right, ethically or legally, to overpower a woman's rights to her body and her emotions, Senate bill 294 would sanction this belief by extending and acknowledging the legal rights of married women.

Rape does occur in marriages and is often accompanied by other acts of violence used to control and humiliate women. One woman, who was raped by her husband, sought help through the Battered women's Shelter and Women's Place in Missoula. This client was married for ten years, has two children and was

127 East Main Room 218 Missoula, Montana 59802 543-7606

recently divorced. She was willing to be quoted for use in this testimony to support the fact that rape in marriage is very real and is a violation of human rights.

(quote)"To talk about the actual rape, it was really terrifying. I don't think it would have been more terrifying if a stranger had done it. Because it was so violent, and he was smothering me.....I couldn't breathe. He was talking about killing himself and I didn't know if I would make it through the night. He said it wasn't that bad because we were married. That it wasn't that big of a deal. His family, his brothers all said it was fine.....it's understandable because they would do the same thing."(unquote)

When a man rapes his wife, he is no longer in the role of a trusted companion; the man becomes a stranger, untrustworthy, physically aggressive and often violent. Yet the law, as it currently reads, does not view this as a crime of violence. Technically, it was this man's right, and any man's right because there is no no law against it. The state of Montana is legally sanctioning this violence. The social values supported by the law, state that it is morally ok to victimize one's wife.

(quote)"He couldn't understand why it bothered me, he still doesn't understand..... he thinks he had a right to do it. He couldn't understand why I wanted a divorce".

The responsibility of the Legislative body is to establish laws. Through these laws, social standards and values are instilled in the minds of individuals. So as legislators, you are guiding and determining these social values. With a law against marital rape, men will begin to question their rights to violate their wives, and view this act as morally wrong. This is the first step towards ending sexual assault within marriages.

Marital rape is prevalent in Montana, yet no statistics are kept by law enforcement officials because it is not prosecutable. Since October of 1984, there were 578 domestic violence cases reported in Montana. It is estimated by women who worked with these cases that 50% involved marital rape. It is frustrating and discouraging for women when they do not have the legal system as an option for regaining control in their lives.

Members of the opposition to marital rape legislation have used the argument that women would use this as a vindictive weapon against their husbands; a cry wolf strategy for getting even. This is an unjustified argument when one considers the personal nature of reporting a rape. Rape victims face a great deal of personal vulnerability and exposure through the process of reporting, and the decision to report is not an easy one to reach. Rape exams, which are



important for gathering evidence for prosecuting, are often painful, expensive, and frightening. It is hard to imagine a woman putting herself through this experience just to get even. This trivial concern negates the seriousness of this issue.

From a professional perspective, it is necessary for agencies to work together to stop domestic violence in the family, including sexual assault. These agencies include support services, shelters, and law enforcement agencies. Agencies cannot give adequate services without also providing legal referrals and options for women. Senate bill 294 would aid in achieving more tangible options for support by granting married women legal rights for protecting themselves against spousal rape. We strongly urge you to legislate and ensure enforcement of laws against marital rape, in hopes of providing love without fear.

Susan Wall-MacLare 2/14/85

Bill Tulp 2/14/85

Kerry Wall-MacLare 2/14/85

Sue Silverberg 2/14/85

Frank Cindrich 2/14/85

Diana Moffatt 2/14/85

Cynthia H. Cook 2/15/85

Pat Edwards 15 Feb 85

Angie Hansen Domestic Violence Program Co-ordinator - Women's Place

Mr. Chairman and members of the committee:

Any law that exempts a man from accountability for the sexual/abuse of a woman simply on the grounds that he is married to the woman, is not only a violation of the fundamental constitutional right to equal protection under the law, but a flagrant violation of the loftiest ethical understanding to which the majority of our nation presumes to subscribe. There is no more justification for such a legal exemption than to condone an adult's beating or molestation of a child simply because the adult happens to be the child's parent.

That legal flaw has been grounded in a pre-Christian assumption about women in general and wives in particular—an assumption that ~~for~~ married women are not so much the partners of their husbands as they are their property. Thus this historic exemption was not for reason of thinking that husbands were incapable of raping their wives, but that they had a possessive relationship to their wives that they did not have to other women. The spurious argument that the state had no right to interfere in episodes of human cruelty simply because it was inflicted in a domestic setting has been ~~XXXXXX~~ a serious illustration of societal irresponsibility which, at long last, our society has begun to question out loud, and for reason of which many of our states are changing their laws.

My argument is not that a law should be passed because the Christian ethic demands it, although I believe it does, for in a society that cannot constitutionally favor any particular religious tradition that would be a false reason. I'm here simply to lift up a human and, if you please, humanistic concern that calls for a higher ethical sensitivity than our traditional understanding of these matters has demonstrated.

There are some things we need to know in considering this bill and its amendments. We need to know that a marriage license and vow does not, of itself, protect a woman from sexual or other physical ~~XXXXXXXXXXXX~~ abuse. <sup>THEYSELVES</sup> ~~by her husband~~ We need to know that until our laws are changed on this matter, married women will continue to be unprotected from cruelties that can and do take place within the home. We need to know that the present exemptions of accountability ~~for~~ on the part of husbands, in fact, provides protection to oppressive attackers which we would under no circumstances ~~condone~~ <sup>PROVIDE</sup> outside the home.

If the married woman, brutalized physically or sexually, were your daughter or mine, there is ~~XXX~~ little question what our judgment would be about the attacker, even if it was our son-in-law. This bill needs to be worded in such a way to as guarantee as much protection to a family member as to a stranger from unconscionable physical and sexual abuse.

Many states in our union have already written such laws. ~~IN THE NAME OF GOD~~ <sup>IN THE NAME OF GOD</sup> I don't want to see Montana be one of the last to do this, but one of the next. I urge you to bring that about. ~~BY THE PEOPLE OF MS 294~~

*Robert Stedman*

Pastor, St. Paul's United Methodist Church, Helena, Montana

IN KEEPING WITH THE URGING OF THE FEDERAL DEPARTMENT OF JUSTICE TO BRACE...

February 18, 1985

EXHIBIT P

3/21/85

SB 294

Capitol Station  
Helena, Montana 59801

Dear Legislators,

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In 1979, The State Task Force on Spouse Abuse (which I chaired for 4½ years) introduced SB 409 which eliminated the exclusion regarding rape between spouses if they are living apart "whether under a decree of judicial separation or otherwise." The Victim who testified on this Bill grew up in Missoula. She married and moved out of State, but found herself in a very violent relationship. She changed her name and moved into a different town in Montana and thought he would never find her. One night she came home and he had broken into her apartment, slashed all of her furniture with a knife, and slashed her 17 times and raped her. The 1979 Legislature passed this first protective legislation dealing with this problem.

As you are already aware, we are not talking about 'NORMAL FAMILY RELATIONSHIPS.' In 1984, my staff and I worked with 570 Women and Children in our Mercy Home Shelter, and 789 ADDITIONAL FAMILIES in outreach and aftercare. Because of our Educational efforts we are doing much more prevention work.. We use an in-depth 3 page 'Confidential Intake' Form to get the case histories of the different types of abuse and we find RAPE is part of the Physical Violence in 70% of our cases.

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- had a .357 Magnum Pistol held to her head while he raped her.
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Researchers and service providers have found that Children raised in a family where there is 'Spouse Abuse' learn 'violence is acceptable or normal behavior' and become abusers themselves even if they themselves are not abused.

Service providers in Montana are trying to offer options and education throughout the State against this 'learned behaviour'. We ask for your continued support in this 'PROTECTIVE LEGISLATION' of SB 294.

Sincerely yours,

*Caryl Wickes Borchers*

Caryl Wickes Borchers, Exec. Director Mercy Home

Chair, State Task Force on Spouse Abuse 1978-1982

Leg. Rep. MONTANA COALITION AGAINST DOMESTIC VIOLENCE

RE: MARITAL RAPE - Senate Bill No. 294

Dear Legislators:

I have been asked to speak on behalf of many women in Montana who have been, are, or will be victims in a battering relationship. Women are victims in three types of situations: dating, marriage, and even after divorce. However, I would like to speak in reference to the issue of the married woman who has been raped by her husband.

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Marital rape is something that most often occurred after a violent outburst during phase three of the battering cycle. This phase is made up of kind and contrite loving behavior by the batterer. In my own experience this happened many, many times. There were also occasions when my husband wanted me to take part in unnatural sexual relations. I always refused, and he always forced it on me regardless of how I felt about this degrading, immoral behavior. I can remember in particular one of these times when he badly beat me on the back with his heavy-heeled shoes that he wore to church.

Dr. Lenore Walker, one who has done an extensive study on the battering relationship, states in her research book, The Battered Woman, the following:

Most men feel that their wives' sexual availability is guaranteed by the marriage license. p. 126.

Marjory Fields, the New York City attorney specializing in domestic violence, states that if all the marital rapes were added to the official rape rate, the resulting figures would be overwhelming. Most of the women interviewed in this study felt they had been raped by their batterers. p. 108.

These women are trapped in this type of relationship for many reasons that time will not allow me to go into, and in many cases, they cannot speak for themselves. It takes a tremendous amount of courage and fortitude to make "the break" go get help. Marital rape, up until the past few years, has been a gray area that has now turned black. It is a very large part of the fears of its victims as it can be unpredictable.

Further marital rapes need to be prevented by putting these actions on the criminal's side. Let him take responsibility for his criminal behavior.

Thank you for your consideration and support.

February 19, 1985

Dear Legislators,

The act of rape is purely a crime of violence. It is not a sexual act or a crime of passion. It is brutal violence. The idea persists that women are victimized by strangers. In reality, statistics show 75% of all rapes to be acquaintance rapes. Add to this total the number of marital rapes and the number would be overwhelming.

As a volunteer working with battered women, I see a strong need for a law protecting married women from this violent crime. Women who have been physically assaulted by their husbands run a greater risk of becoming victims of rape than the average individual. These spouses need not be living apart for the criminal act of rape to occur.

The accounts, by battered women, of sexual assaults and marital rape are numerous. This story of one victim illustrates the need for legal action to be taken against the perpetrators of this violent crime.

Helen first came to us after she had been divorced from her husband, John, for two years. At this time John was fighting her for the custody of their two youngest children. It was only after working with us for a period of three years that Helen was able to recount the atrocities she was subject to in the course of their 11 year marriage.

The sexual assault John committed against Helen took numerous forms. While some were more physically and emotionally damaging, all the sexual abuse resulted in sexual degradation. Helen is quoted as saying, "Not only did I not feel like a woman, I no longer felt like a human being."

John's favorite fantasy, and one frequently lived out was to rape Helen. She was supposed to resist. Many times John committed this crime, seriously endangering Helen's health. The delivery of Helen's first child was a painful and difficult one. On the very day that she returned home from the hospital John raped her, tearing through still - tender stitches. On the day she returned home from the hospital after gall bladder surgery, John raped her again. The more she cried and tried to resist, the more pleasure he seemed to derive. It seemed to Helen that John could only enjoy sex if he made her cry by hurting her first.

Helen was not the only victim of John's violent nature. He tried on a number of occasions to rape his brother's wife as well as other married women in their neighborhood. Helen was the only victim, however, not protected by law.

The brutal assaults on Helen are not uncommon today. While marital rape does not happen in typical loving homes; it does, in fact, happen. Married women are entitled to protection from the crime of rape, regardless of the marital status of the criminal. Please provide women with this protection by supporting Senate Bill 294 - redefining the marital rape law.

Thank you.

Sincerely,

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



EXHIBIT S  
3/21/85  
SB-294

March 21, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before the House Judiciary Committee on SB 294

Mr. Chairman and other members of the Judiciary Committee:

For the record, my name is Gail Kline, representing the Women's Lobbyist Fund (WLF), speaking in favor of SB 294.

SB 294 only removes the words "not his spouse" from Section 45-5-503, sexual intercourse without consent. Yet, by removing these three words you as legislators will make a positive impact on family life.

In Montana, marital rape is not a crime and can't be prosecuted. So the seeds of family violence are sown and the cycle of violence grows.

In this, the 49th Session, you recognized rape as a violent act and included sexual intercourse without consent, in HB 103 for delinquent youth.

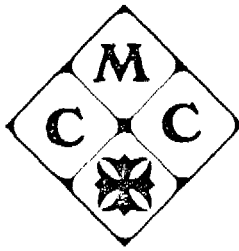
Now, we are asking you to recognize that rape in marriage is a crime being committed in Montana homes and that it will not be tolerated.

In the U.S. Department of Justice, Attorney General's Task Force on Family Violence, Spetember 1984, page 4 said, "The legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser."

As of a month ago, this violent act, rape in marriage, is illegal in 24 states plus Washington D.C. according to the Women's Histoy Research Center, Inc. West Virginians just changed their law.

By passing SB 294, we make a positive impact on family life and add individual dignity for the victim of rape. We comply with our state constitution in that "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

The WLF urges you to pass SB 294.



# Montana Catholic Conference

March 21, 1985

CHAIRMAN HANNAH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference.

I am here as a supporter of Senate Bill 294.

Since we usually tend to think of social norms that call for gentleness and love within a family, it is difficult to accept the fact that violence is a reality for many persons within the married state.

The dictionary defines violence as the "unjust and unwarranted exertion of force." It would seem to us that sexual intercourse without consent preformed within the married state is one of the grossest forms of violence that can a person can be subjected to. Such acts not only are physically violent acts upon the other's person, but are a result of a more basic form of violence-- the corruption of moral character, the deadening of conscience.

The marriage license is not a license for abuse. It is a license for persons to nurture one another and care for one another.

The Montana Catholic Conference asks your support for Sentate Bill 294.



Address to the New York County Lawyer's Association,  
May 3, 1984

May, 1984

MARITAL RAPE: THE MISUNDERSTOOD CRIME

David Finkelhor, Ph.D.  
Associate Director  
Family Violence Research Program  
University of New Hampshire  
Durham, NH 03824

None of these atrocities (and there were others of equal brutality) were ever reported to the police or to a newspaper. Some were never reported anybody.

And these were marital rapes. If other people had these images inscribed in their memories when they thought of marital rape in the same indelible way that my colleague and I do, I do not think we would hear nearly so much nonsense about this problem.

However, this imagery of marital rape is not the whole reality either. From a survey we did of 521 women in Boston and from one Diana Russell did of 93 women in San Francisco, we estimate that marital rape is amazingly frequent -- occurring to as many as 10 to 14% of all married women. When talking about the problem of these dimensions, it is no more fair to say that marital rape is always a savage attack than it is to say that it is always a bedroom squabble. We are talking about a spectrum of which both of these are a part.

To make some sense of this spectrum, my colleague and I, after carefully analyzing the cases of the women we interviewed, found that it was useful to divide them into three broad categories. We decided to call these three categories battering rapes, non-battering rapes and obsessive rapes.

Battering rapes were the most brutal and included most of the incidents I cited earlier. They occurred in relationships where, in addition to the sexual abuse, there was a large amount of physical abuse. These husbands tended to have problems with alcohol and drugs. They had enormous reservoirs of anger which they vented on their wives and often other people in their environment. The rapes tended to take place in capricious and unpredictable circumstances, much like the other violence. They seemed to have little to do with sexual issues per se. In fact, many of these women said they made themselves sexually available whenever their husband wanted them. Rather, these men seemed to be motivated by an intense desire to punish, humiliate, degrade, and retaliate against their wives using rape as the vehicle. (About forty-five percent of the women we interviewed suffered from battering rapes.)

The non-battering rapes were substantially different. They occurred in more middle class marriages where there was much less of a history of violence and abuse. The immediate precipitant of these rapes was more likely to be a specifically sexual grievance, for example, over how often to have sex or what kinds of sex. The force involved was often more restrained, enough to gain sexual access, but not enough to cause severe injury. These rapes seemed to be motivated less by anger than by a desire to assert power, establish control, teach a lesson, show who was boss. (Another forty-five percent of the rapes were of this sort.)

Finally, there was a third kind of marital rape we uncovered in about 10% of the situations that we called obsessive rapes. In these relationships, the husbands had unusual sexual preoccupations. Most were obsessed with pornography; they wanted their wives to help them make it. Most were obsessed with their sexual problems; they were afraid of being impotent or homosexual. Often they had highly structured rituals about sex. They could only get aroused if their wives were in a certain position, or if they touched them in a certain way, or if they "staged" a rape. There was a sense that many of these needed violence or struggle in order to have sex.

Very different.

Marital rape is a crime with a name, but without a reality. Even where it exists in our legislation, it does not exist in our imagination. Despite debates in the congress and in the courts, people have only the vaguest and most misleading picture of the victims of this crime -- victims humiliated by their assailants, ashamed among their closest friends, deprived of the protection of the law, and ignored by the professionals -- these stories have not yet touched the conscience of the community.

It was to hasten this process that my colleague Kersti Yllo and I recruited and interviewed fifty women who had been sexually assaulted by their husbands. The women were ordinary women, most of them clients at family planning agencies who were asked as part of their regular medical history if they had ever been sexually assaulted by their partner. Many were telling their stories for the first time.

The depth of popular ignorance about the problem of marital rape runs deep. When we asked groups of students, for example, to invent vignettes of marital rape, one wrote, "He wants to. She doesn't. He wins". Can you imagine a stranger rape so described: "He wants to. She doesn't. He wins." No! The imagery of stranger rape has knives and dark alleys and terror and violence and degradation.

So does marital rape! People are apt to think of marital rape, if they think of anything at all, as a bedroom squabble over whether to have sex tonight. No wonder they rate it in surveys as being about as serious an offense as driving while drunk. But marital rape does have brutality and terror and violence and humiliation to rival the most graphic stranger rape.

Among the fifty women we interviewed:

--one had been raped at knifepoint by a husband who held her up against the wall and threatened to kill her.

--one was jumped in the dark by her husband and raped in the anus while slumped over a woodpile.

--one was gang raped by her husband and his friend holding blackjacks after they surprised her alone in a vacant apartment.

--one had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child.

--one had a 6 centimeter gash ripped in her vagina by a husband who was trying "to pull her vagina out".



These three -- battering, non-battering and obsessive -- were the types of rape we identified from our interviews with marital rape victims. There may be other types; we may need to refine our conceptions. The important point is that marital rape happens in a wide variety of contexts. We need an imagery that encompasses this variety, and we can only get it by listening to the stories of the women it happens to.

The absence of these stories from the conscience of the community results in another misunderstanding about marital rape -- this one concerning its impact. People do not believe that marital rape hurts. In 1979, a nationally syndicated columnist invented some experts to bolster his own prejudices and wrote that "many U.S. jurists agree that when a husband compels his wife to engage in sex relations, she suffers relatively little of the psychological trauma incurred in rape by a stranger" (Lloyd Shearer, Parade Magazine, April 22, 1979).

(Notice how the husband only "compels his wife" while what the stranger does is rape.)

"This isn't like he's grabbing some lady off the street", argued John Rideout's defense attorney Charles Burt. "This is a woman he may have made love to hundreds of times before." In other words, if he had made love to her hundreds of times before, how traumatic could one more time be?

Options like this betray a fundamental misunderstanding of the trauma of rape in general as well as the trauma of marital rape in particular. Rape is traumatic not because it is with someone you don't know, but because it is with someone you don't want -- whether stranger, friend or husband.

Burt's idea is akin to saying that if your business partner empties your joint account and runs off to Venezuela, it shouldn't hurt, because after all, you'd written him hundreds of checks before.

Rape is the intimate violation of a person's trust and autonomy. Prior intimate contact only makes the violation that much more so.

In fact the studies that have looked at this question empirically have indeed found that the victims of marital rape do suffer greater and longer term trauma than other rape victims. This finding is not surprising to those who have talked to marital rape victims and have come to recognize the three special injuries of marital rape: the betrayal, the entrapment and the isolation.

More so than victims of any other kind of rape, the victims of marital rape suffer a profound betrayal. Among the women we interviewed, the fact that someone whom they had loved and needed could violate them in such an intimate way destroyed their ability to trust others. "I thought so highly of him and he turned out to be a rapist," said one woman. The experience also sapped their confidence in themselves and their faith that they had the capacity to choose trustworthily companions. Years later, many of these women found it impossible to contemplate intimacy with a man. This is a component to marital rape that has no parallel in stranger rape.

A second component that makes marital rape different and more traumatic than other forms of rape is the entrapment. Most marital rape victims are raped not just once but many times. Half of our interviewees had been sexually

assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation. Many grappled with never-ending anxiety about when the next forced sex episode might occur. This took its toll in the form of chronic terror, emotional numbing, involuntary panics, and repetitive nightmares that often lasted for years after the relationship had ended and the threat of rape had gone. In the sexual sphere, victims suffered from flashbacks and inability to engage in sex. The corrosive impact of marital rape could be summed up thus: when you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband you have to live with a fear that was difficult to erase.

It is to erase this scar of isolation that I think we owe our first priority. The debate about criminalizing marital rape speaks to many issues: justice, fairness, equality, deterrence of crime, and retribution against offenders. Yet the issue that is paramount for me is compassion for victims.

We must reach out to the victim of marital rape and extend legitimacy to and compassion for what they have suffered. Doctors need to be aware, for example, that it is not a simple matter for some women to avoid sex post-operatively, even though their recovery urgently requires it. Family planning agencies need to take into account that in some women's marriages, contraceptives like a diaphragm will not be adequate protection.

Attorneys need to recognize and alert divorcing women to the particular vulnerability they face from embittered husbands during the period following a separation. Marriage counselors need to know that the unspoken and unacknowledged grievance plaguing many wives is that their husband sexually assaults them.

(Incidentally, it is interesting to note that in the whole 25 year literature on sex therapy and marital sex, one can search in vain for any reference to the problem of marital rape, an experience that may be occurring to one in ten wives.)

Marital rape has been a non-problem for too long. Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few offenders out of our community, but it will bring a whole lot of victims back in. The invitation is long overdue.

WITNESS STATEMENT

NAME Karen S. McKee BILL NO. SB 294  
ADDRESS 421 Daly #5 Missoula MT 59801 DATE 3-21-85  
WHOM DO YOU REPRESENT? Women's Place - Missoula  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: